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MONTANA LEGISLATIVE HISTORY

Chapter NA Session L 1985
Bill House _____ Senate 435

History and final status sheet X
Introduced bill X
Fiscal note NA
Third reading bill X
Final version of bill NA

House Committee on Judiciary
Hearing date(s)* 3/26 _____
_____ _____
Executive action (vote) date(s)* 3/26
Comm. Report 3/26
Floor 2nd reading & vote NA
Floor 3rd reading & vote NA

Senate Committee on Natural Resources
Hearing date(s)* 2/22 2/22
_____ _____
Executive action (vote) date(s)* 2/22 pm
Comm. Report 2/23
Floor 2nd reading & vote 2/26
Floor 3rd reading & vote 2/27

Conference or Free Conference Comm. _____ Yes X No
Hearing date(s)* _____
Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? _____ Yes x No
Committee _____ Report _____

NOTES: Prior Permission When Using Private Land for Recreational Purposes

Failed in House committee 3/26

State Law Library of Montana

Compiled by: rg
Date: 7/18/2016

SENATE FINAL STATUS

SB 435 INTRODUCED BY GALT
PRIOR PERMISSION WHEN USING PRIVATE LAND FOR RECREATIONAL PURPOSES

2/15	INTRODUCED		
2/16	REFERRED TO NATURAL RESOURCES		
2/22	HEARING		
2/23	COMMITTEE REPORT-BILL DO PASS		
2/26	2ND READING PASS	33	12
2/27	3RD READING PASS	34	16
	TRANSMITTED TO HOUSE		
3/06	REFERRED TO JUDICIARY		
3/26	HEARING		
3/29	ADVERSE COMMITTEE REPORT		
3/30	BILL KILLED	57	37

SB 436 INTRODUCED BY BENGTSON, B. BROWN
REVISES HOUSEHOLD & DEPENDENT CARE EXPENSE DEDUCTION FOR INCOME TAX

2/15	INTRODUCED		
2/16	REFERRED TO TAXATION		
2/16	FISCAL NOTE REQUESTED		
2/22	FISCAL NOTE RECEIVED		
2/27	HEARING		
3/11	FISCAL NOTE REQUESTED		
3/11	COMMITTEE REPORT-BILL PASS AS AMENDED		
3/14	FISCAL NOTE RECEIVED		
3/19	2ND READING PASS AS AMENDED	49	1
3/20	3RD READING PASS	45	5
	TRANSMITTED TO HOUSE		
3/21	REFERRED TO TAXATION		
3/27	HEARING		
3/29	COMM REPORT-BILL CONCURRED AS AMENDED		
3/29	FISCAL NOTE REQUESTED		
4/01	2ND READING CONCURRED	97	0
4/01	3RD READING CONCURRED	99	0
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	FISCAL NOTE RECEIVED		
4/04	2ND READING AMENDMENTS CONCURRED	49	1
4/08	3RD READING AMENDMENTS CONCURRED	46	3
4/17	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 613 EFFECTIVE DATE: 10/01/85		

SB 437 INTRODUCED BY FULLER, ASAY, REAM, ET AL.
TAX CREDIT FOR INSTALLATION OF ENERGY SYSTEMS

2/15	INTRODUCED
2/16	REFERRED TO TAXATION
2/16	FISCAL NOTE REQUESTED
2/22	FISCAL NOTE RECEIVED
2/25	HEARING
3/12	TABLED IN COMMITTEE

INTRODUCED BY Seggle Daly BILL NO. 935

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT PERMISSION OF THE LANDOWNER MUST BE OBTAINED PRIOR TO USING PRIVATE LAND FOR RECREATIONAL PURPOSES; AMENDING SECTIONS 87-1-504 AND 87-1-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Landowner's permission required for recreation on private land. Except when incidental to and necessary for the recreational use of surface waters as provided by law, no person may enter or remain on private real property for recreational purposes without having first obtained permission from the landowner, lessee, or his agent. Any person convicted of violating this section shall be punished as provided in 87-1-102(1).

Section 2. Section 87-1-504, MCA, is amended to read:

"87-1-504. Protection of private property -- wardens as ex officio fire wardens. It shall be the duty of wardens (state conservation officers) to enforce the provisions of [section 1] on private lands and to enforce the provisions of 45-6-101, 45-6-203, and 75-10-212(2) on private lands where public recreation is permitted and to act as ex officio fire wardens as provided by 77-5-104."

Section 3. Section 87-1-505, MCA, is amended to read:

"87-1-505. Warden's power in protection of private property. Wardens (state conservation officers) shall have the power of peace officers in the enforcement of 45-6-101, 45-6-203, [section 1], and 75-10-212(2)."

NEW SECTION. Section 4. Codification instruction. Section 1 is intended to be codified as an integral part of Title 70, chapter 16, part 3, and the provisions of Title 70, chapter 16, part 3, apply to section 1.

-End-

INTRODUCED BILL
SB 935

STATUS SHEET

Natural Resources COMMITTEE

49th LEGISLATURE

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB435	PRIOR PERMISSION WHEN USING PRIVATE LAND FOR RECREATIONAL PURPOSES	2/18	GALT	2/22	DO PASS	2/23
SB444	REQUIRE PSC TO ADOPT RULES TO RECOGNIZE A CITIZEN'S UTILITY ORGANIZATION	2/19	HALLIGAN	2/22 2/22 2/25	DO PASS	2/23
SJR12	APPOINT FOUR LEGISLATORS TO WESTERN TASK FORCE	1/28	SEVERSON	2/1	DO PASS	2/1
SJR16	MONTANA AND WYO. RESOLVE DIFFERENCES ON POWDER RIVER	2/4	YELLOW-TAIL	2/15	DO PASS	2/15
SJR29	SUPPORTING SEN. DAVE MANNING'S EFFORTS FOR OFF-STREAM YELLOWSTONE HYDRO DEVELOPMENTS	2/23	WEEDING	2/23	DO PASS	2/23

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
February 22, 1985

The twelfth meeting of the Senate Natural Resources Committee was called to order at 12:31 p.m. by Chairman Dorothy Eck in Room 325, State Capitol Building.

ROLL CALL: All members of the Senate Natural Resources Committee were present.

CONSIDERATION OF SB435: Senator Galt, sponsor of SB435, stated SB435 is such a simple bill that he is surprised this law is not already on the books. The bill requires a person to obtain permission from landowners before using the land for recreational purposes. Senator Galt stated the law would not only apply to persons who use a farmer's or rancher's land, but also to persons who use a private golf course. Senator Galt feels the passage of this bill will help enforce Montana's current laws regarding trespassing.

PROPONENTS: Mr. Conrad B. Fredricks, of Big Timber, Montana, submitted written testimony (Exhibit 1) in favor of SB435.

Mr. Mike Micone, representing Western Montana Environmental Trade Association, urged the committee to support SB435. Mr. Micone explained this bill will extend Montana's current big game laws to include all persons using private land for any recreational purposes. Mr. Micone stated by requiring the user to obtain permission before going on private property, the burden will be shifted to the user.

Mr. Jim Flynn, representing the Department of Fish, Wildlife and Parks, submitted written testimony (Exhibit 2) in favor of SB435.

Ms. Carol Mosher, representing the Montana Cow Belles and Women in Farm Economics, submitted written testimony (Exhibit3) in favor of SB435.

Mr. Lorents Grosfield, from Sweetgrass County, stated SB435 will improve the relationship between landowners and land users. Mr. Grosfield feels Montana's big game law is an excellent one, and passage of SB435 will make the law even better. Mr. Grosfield hosted 863 hunters on his ranch last year without charge. Mr. Grosfield stated he would not have allowed this hunting if it were not for Montana's big game laws. Mr. Grosfield feels SB435 should be extended to cover

all recreational purposes. Mr. Grosfield does contend, however, that posting should not be a requirement of the landowners, since people are required to know where they are and what the rules are.

Mr. Ralph Holman, a rancher and hunter from MacLeod, Montana, feels Montana's current trespass laws are weak and ineffective, and trespassing is a problem for landowners. Unfortunately, the good sportsman suffers because of "slob" hunters.

There being no further proponents, the hearing was opened to opponents.

OPPONENTS: Ms. Mary Wright, representing the Montana Council of Trout Unlimited, submitted written testimony in opposition to SB435 (Exhibit 4).

Mr. Dan Heinz, representing the Montana Wildlife Federation, stated he favors HB911, which is a compromise bill. Mr. Heinz feels that although HB911 requires posting, it is a better bill.

There being no further opponents, the hearing was opened to questions from the committee.

Upon question from Senator Mohar, Mr. Flynn stated he did not have any proposed amendments regarding the minimum posting requirements.

Upon question from Chairman Eck, Mr. Heinz explained HB911 requires posting by landowners at each gate entering the land and at other points of entry normally used. It also provides for posting on rivers where people commonly enter the land.

There being no further questions from the committee, Senator Galt closed the hearing by stating SB435 will give the same protection to private landowners as enjoyed by the people who live in cities. Senator Gage urged the committee to give strong consideration to this bill.

CONSIDERATION OF SB444: Senator Halligan, sponsor of SB444, stated the purpose of the bill is to create an effective power to represent the public consumer in utility proceedings. At the current time, there is no state-wide organization whose purpose is dedicated to representing residential utiltity consumers at rate proceedings. SB444 will require the Montana

ROLL CALL

Natural Resources COMMITTEE

48th LEGISLATIVE SESSION -- 1985 Date 022285

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (Chairman	✓		
HALLIGAN, Mike (Vice Chairman)	✓		
WHEEDING, Cecil	✓		
MOHAR, John	✓		
DANIELS, M. K.	✓		
FULLER, David	✓		
CHRISTIAENS, Chris	✓		
TVEIT, Larry	✓		
GAGE, Delwyn	✓		
ANDERSON, John	✓		
SHAW, James	✓		
HARDING, Ethel	✓		

Each day attach to minutes.

(This sheet to be used by those testifying on a bill.)

NAME: Conrad B Fredricks DATE: 2/22/85

ADDRESS: Big Timber

PHONE: 932-5440

REPRESENTING WHOM? Sweet Grass County Preservation Assn

APPEARING ON WHICH PROPOSAL: SB ~~NO~~ 435

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: See attached written testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 1
DATE 022285
BILL NO. SB435

TESTIMONY RE SENATE BILL NO. 435

Submitted by Conrad B. Fredricks, Big Timber, Montana.

Senate Bill No. 435 is a bill designed to alleviate a problem which exists with regard to persons who use the lands of another for recreational purposes without permission.

At the present time, there is a statute on the books (Section 87-3-304, M.C.A.), enacted in 1965, which requires a person to obtain permission of the landowner, lessee, or their agents before hunting big game animals on private property.

This statute has helped to maintain better landowner-hunter relations by making it easier for the landowner to control big game hunting on his property, easier for the landowner to protect his livestock, crops and other property from uncontrolled hunting, and easier for the landowner to fix liability when his livestock or other property is damaged or destroyed.

However, Section 87-3-304 only applies to big game hunting, and does not apply to other uses of property which are also dangerous and troublesome to the landowner and his property, such as bird hunting, predator hunting, bow hunting, non-game animal hunting, target practice, camping, firebuilding and use of off-road vehicles, including snowmobiles.

The Department of Fish and Game has recognized the problem and, apparently, supports the concept of Senate Bill No. 435, as is evidenced by the Department's "ASK FIRST" campaign. This bill merely, as a practical matter, gives statutory sanction to the "ASK FIRST" campaign and only requires what common courtesy and a concern for private property dictates as a matter of course.

Certainly, no one who has any respect for private property or the rights of landowners to protect and control the use of their property, which they bought and paid for and pay taxes on, could object to a requirement that a person obtain permission before using private property for recreational purposes. This would seem to be particularly true in Montana, where large amounts of public land are available for public recreation.

The State and Federal Governments have the power to, and do, promulgate and enforce regulations governing the use of

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 1
DATE 022285
BILL NO SB435

public lands. Certainly it is only fair for the State of Montana, through its Legislature, to afford the same protections to private property.

It is submitted that only a person who has no respect for private property or a landowner's right to protect his property from damage or destruction would oppose this legislation. Unfortunately, there are persons in this category and it is those persons that this legislation is designed to apply to.

It may be argued that permission should not be required unless the landowner posts his land, showing that permission is required to use it. First, the burden should be on the person who wants to use another's property to make arrangements to use it, and the burden should not be on the landowner to post property, with the resultant expense and trouble. Secondly, there can be little doubt that posting does not work for the type of people who would want to use a landowner's private property without permission, as is witnessed by the frequent tearing down and disappearance of signs erected by landowners to post their property. The responsibility should be on the shoulders of the persons who want to use private property for recreational purposes, not on the landowner. Big game hunters have shouldered this responsibility for years -- why shouldn't other hunters and recreational users?

It is respectfully submitted that this Committee should pass this bill to the Senate with a "do pass" recommendation.

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11

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SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 1
DATE 022285
BILL NO SB435

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It is respectfully submitted that this Committee should pass this bill to the Senate with a "do pass" recommendation.

SB 435

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

February 22, 1985

The department supports the expansion of authority for state game wardens to clearly enforce all recreational trespass. Under present law, such clarity only exists for big game hunting.

Additionally, we can support the premise in Section 1 of this bill that permission should be gained to use private property for recreational purposes.

However, we are concerned that this legislation eliminates the need for proper notice by posting before trespassing can occur. This legislation not only doesn't require such notice for other recreational uses, but would appear to remove the present statutory requirement for big game hunting.

As I have mentioned, there is no question that an individual who is recreating should have permission from the landowner if private land is to be used for recreation. But we must keep in mind that Montana is a large and diversified state with many different types of intermingled landownership. Some of this land is clearly fenced and some is not. Some is publicly owned and some is not. As a result, there are a variety of circumstances afield which can and do lead to unknowing trespass.

While it is not realistic to require an undue amount of posting, neither is it realistic to allow for no posting.

We would suggest that the committee consider a requirement for proper notice before trespass can occur.

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 2
DATE 022285
BILL NO. SB435

(This sheet to be used by those testifying on a bill.)

NAME: Carol Mosher DATE: Feb. 22, 1983

ADDRESS: Augusta, Mt.

PHONE: 562-3315

REPRESENTING WHOM? W.I.F.E.

APPEARING ON WHICH PROPOSAL: SB 435

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENT:

We fully support the language and intent of this bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 3
DATE 022285
BILL NO. SB435

(This sheet to be used by those testifying on a bill.)

NAME: Carol Mosher DATE: Feb 22, 1985

ADDRESS: Augusta

PHONE: 562-3315

REPRESENTING WHOM? Montana Cow Belles

APPEARING ON WHICH PROPOSAL: SB 435

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT:

We fully support the language of SB 435. We certainly agree that game wardens should have the power of peace officers and that it will not take a substantial amount of their time. It is much easier to contact game wardens than it is deputy Sheriffs. It has been stated at other hearings that a person may not know where he is. Our position is that anyone should know where they are or not be there at all. Retaliation from disgruntled recreationists is a threat we live with in the west areas of the State and most difficult to deal with, so there must be adequate enforcement.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 3
DATE 022285
BILL NO. SB435

TESTIMONY ON S.B. 435

MONTANA COUNCIL, TROUT UNLIMITED

FEBRUARY 22, 1985

Mr. Chairman and members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

We question certain aspects of this bill. While we support the concept of obtaining landowner permission before using private land for recreation, we believe that this bill imposes too heavy a burden on recreational users to know the land ownership and boundaries at all times. A sportsman could use all the usual tools at his disposal, including maps, posting, inquiries and personal knowledge, and still be mistaken about ownership and boundaries. Many thousands of acres of land have changed from public to private ownership since maps have been revised, and not all lands are accurately posted. Therefore, this bill would criminalize good faith behavior on the part of a sportsman who made a thorough good faith effort to do the right thing.

In addition, we do not believe that the term "incidental to and necessary for" the recreational use of surface waters is sufficiently clear to give guidance to the same class of sportsmen who are trying to do the right thing. We would also point out that the penalty for violation would include not only a fine and possible jail sentence,

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 4
DATE 022285
BILL NO. SB435

but also loss of the privilege to hunt, fish or trap for a period of at least two years following the date of conviction. We believe that the penalty is inappropriate for what would be essentially a trespass situation which could occur without knowledge, intent or even negligence on the part of the defendant.

Our position is not that there is no need for legislation in this area. The purpose of the bill could be accomplished in other ways, for example, by a legislative statement of what constitutes adequate posting on the part of a landowner. That approach could provide more certainty for the landowner while not requiring sportsmen to shoulder a potentially impossible burden.

As introduced, however, we must oppose S.B. 435 and request that the Committee not take favorable action on it.

Thank you very much for the opportunity to testify here today.

DATE C22285

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
K.M. Kelly	Mont. Irrigators	SB 444		X
EARL CONVER	SELF	SB 444		X
DIX C SHERBURNE				X
Lorents Grosfield	Swan Grs County Preservation Assn	SB435	X	
Jim Hughes	MTM. BELL	SB444		X
Tom Monahan	Self	SB444		X
Holly Hand	Montana E.I.C	SB444	X	
Peter F. McNeil	Self	435		X
Mildred Angell	Self	435	X	X
Shirley Hadley	Self	435	X	X
C.B. Pearson	Mont PIRG	444	X	
J.H. Bass	Mont Chamber	444		X
Geoff Birch	Missoula Chamber	444		X
Karla Gray	MPCo	444		X
Mike McLane	WETA	435	X	
Paul M. Sahlman	self	435	X	
Ted Finnicum	self	435	X	
GENE PHILLIPS	PACIFIC POWER & LIGHT	444		X
Carol Mosher	Mt. Env. Relief	435	X	
Carol Mosher	W.I.F.E.	435	X	
Carl Wilson	CCC GREAT FALL	444	X	
WADE WILLISON	LISCA	444	✓	
RUSS RITTER	City of Helena	444		✓
Bill Verwolf	City of Helena	444		✓
Gallie Hollenbeck	Mont Rec	444	✓	
Richard Elliott	MTSC	444	✓	

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(Please leave prepared statement with Secretary)

DATE 02228?

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Norm Olson	BSC	444	Y	
Bob Decker	Lewis & Clark County	444	X	
Lonna Lewis	MLIC / Allstate	444	X	
Chuck Kenney	MLIC - MSCA - FU	444	X	
Debra Kelly	Common Cause	444	X	
Stuart Doggett	Mt. Stockgrowers Assn, Mt. Assn of Grazing Districts	435	X	
Pat Tuchwell?	Mont. Farm Bureau	435	X	
[illegible]	[illegible]	[illegible]	[illegible]	
[illegible]	M.S.C.A. [illegible]	444	X	
Kim Brown	Northern Plains Resource Council	444	X	
[illegible]	[illegible]	444	X	
Jim Morton	District XI HRDC	444	X	
[illegible]	Billings Chamber of Commerce	444		X
GENE PHILLIPS	PACIFIC POWER & LIGHT	444		X

(Please leave prepared statement with Secretary.)

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
February 22, 1985

The thirteenth meeting of the Senate Natural Resources Committee was called to order at 6:07 p.m., February 22, 1985, by Chairman Dorothy Eck, Room 405, State Capitol Building.

ROLL CALL: All members of the Senate Natural Resources Committee were present.

FURTHER CONSIDERATION OF SB444: Chairman Eck stated four minutes would be allotted for testimony from the proponents and another four minutes for testimony from the opponents.

OPPONENTS: Mr. Jim Hughes, representing Mountain Bell, stated the increased postage due to the inserts in Mountain Bell's monthly bills would cost Mountain Bell an additional $44,500 per month. Mr. Hughes informed the committee Montana ranks third only to Wyoming and Alaska in having the most expensive residential telephone service in the United States. Mr. Hughes believes the formation of CUB will cause Montana's telephone rates to increase.

Mr. Gene Phillips, representing Pacific Power and Light Company, stated it is not his position there should not be a CUB, only that CUB should not be allowed access to utilities' envelopes. Mr. Phillips feels if CUB is allowed to use the envelopes, many organizations will also feel they are entitled to the same privilege. Mr. Phillips is concerned as to where to draw the line.

Mr. Russ Ritter, representing the City of Helena, stated he is concerned only if the definition of "utility" includes the City of Helena Water Department. The City of Helena Water Department has 76,000 pre-printed bills that would have to be torn apart to accommodate an insert. Mr. Ritter estimated if these bills were placed in another envelope for mailing, the City of Helena would incur an additional charge of $8,000.

PROPONENTS: Mr. Tom Lonsway, President of the Wisconsin CUB, stated the Wisconsin CUB has never caused an increase in postage for Wisconsin utilities. In Wisconsin, city utilities are not included, so city water departments are not affected by CUB. Mr. Lonsway feels if other organizations wanted to use the utilities' envelopes, they would have to join CUB.

Mr. Jon Motl, representing Common Cause, stated Section 13 of SB444 limits the bill's scope and excludes city utilities.

Senator Halligan submitted a proposed amendment to page 6 of SB277 (Exhibit 3) providing for an allocation of 3.5 percent of the funds to provide a Groundwater Information Center. Senator Halligan explained this 3.5 percent will come right off the top of the money provided for the Legacy Program by the Resource Indemnity Trust Fund Interest Account.

Senator Halligan moved the amendment BE ADOPTED. The motion carried with Senators Shaw, Gage and Daniels voting in opposition.

Senator Fuller moved SB277 DO PASS AS AMENDED. The motion carried by roll call vote (Exhibit 4).

ACTION ON SB347: Senator Shaw moved SB347 BE TABLED. The motion carried with Senator Daniels voting in opposition.

ACTION ON SB348: Senator Christiaens moved SB348 DO NOT PASS. The motion carried by roll call vote (Exhibit 5).

FURTHER CONSIDERATION OF SB410: The following persons representing Bridger Watch, Inc., submitted written testimony in opposition to SB410: Mr. Scott Ramsay, Mary Ann Kelly, Nancy Davis and Philip W. Davis (Exhibit 6).

ACTION ON SB410: Senator Tveit moved SB410 DO PASS. Senator Mohar made a substitute motion SB410 DO NOT PASS. The motion carried by roll call vote (Exhibit 7).

FURTHER CONSIDERATION OF SB435: Upon question from Chairman Eck, Mr. Bob Thompson explained the major differences between SB435 and HB911 are the posting requirements. Under HB911, if the land is not posted, a person may go on the land. Under SB435, if the land is posted, a person must first obtain permission before going onto the land.

Senator Halligan inquired whether trespassing was a major problem for landowners. Senator Shaw stated this bill is a defense mechanism to stop trespassing from becoming a major problem.

Senator Anderson stated although he has never believed in posting his land, he believes SB435 is a good bill.

Senator Weeding reminded the committee SB435 is merely an extension of the big game laws and only requires the recreationist to first obtain permission before going on to private land.

Senator Mohar expressed concerns about the person who is simply unaware of property boundaries. This person may be subject to a $500 penalty and six months in jail. Senator Mohar feels the minimum posting requirements are not too much to ask of the landowners.

Senator Shaw stated that on his ranch it is difficult to determine when a person is on his property, because the public seems to think cattle guards represent boundary lines.

ACTION ON SB435: Senator Shaw moved SB435 DO PASS. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 7:08 p.m.

Dorothy Eck

Senator Dorothy Eck, Chairman

ROLL CALL

Natural Resources COMMITTEE

48th LEGISLATIVE SESSION -- 1985 Date 2/22/85 EVENING

SENATE SEAT #

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (Chairman	✓		
HALLIGAN, Mike (Vice Chairman)	✓		
WHEELING, Cecil	✓		
MOHAR, John	✓		
DANIELS, M. K.	✓		
FULLER, David	✓		
CHRISTIAENS, Chris	✓		
TVEIT, Larry	✓		
GAGE, Delwyn	✓		
ANDERSON, John	✓		
SHAW, James	✓		
HARDING, Ethel	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

FEBRUARY 23, 19 85

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration SENATE BILL No. 435

FIRST reading copy (WHITE color)

PRIOR PERMISSION WHEN USING PRIVATE LAND FOR RECREATIONAL PURPOSES

Respectfully report as follows: That SENATE BILL No. 435

DO PASS

~~XDO NOT PASS~~

SENATOR DOROTHY ECK Chairman.

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Lane, Lybeck, Lynch, Manning, Mazurek, McCallum, Mohar, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Weeding, Williams, Yellowtail, Mr. President.
Total 48

Noes: None.
Total 0

Excused: Kolstad, Neuman.
Total 2

Absent or not voting: None.
Total 0

SB 429 - At the request of Senator Pinsoneault, and without objection, SB 429 be placed below SB 463.

SB 432 - That SB 432 do pass. Motion carried as follows:

Ayes: Blaylock, Boylan, Brown, Christiaens, Conover, Daniels, Eck, Fuller, Haffey, Halligan, Jacobson, Lane, Lybeck, Lynch, Manning, Mazurek, Mohar, Pinsoneault, Regan, Stimatz, Towe, Van Valkenburg, Weeding, Williams, Yellowtail, Mr. President.
Total 26

Noes: Aklestad, Anderson, Bengtson, Crippen, Farrell, Gage, Galt, Goodover, Hager, Hammond, Harding, Himsl, Hirsch, Keating, McCallum, Severson, Shaw, Smith, Stephens, Story, Thayer, Tveit.
Total 22

Excused: Kolstad, Neuman.
Total 2

Absent or not voting: None.
Total 0

SB 433 - That SB 433 do pass. Motion carried as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Lane, Lybeck, Lynch, Manning, Mazurek, McCallum, Mohar, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Weeding, Williams, Yellowtail, Mr. President.
Total 48

Noes: None.
Total 0

Excused: Kolstad, Neuman.
Total 2

Absent or not voting: None.
Total 0

SB 435 - That SB 435, second reading copy, be amended as follows:

1. Page 2.
Following: line 9

Insert: "NEW SECTION. Section 5. Coordination instruction. If House Bill No. 911 is passed and approved, this act is void."

Amendment failed as follows:

Ayes: Christiaens, Halligan, Manning, Mazurek, Mohar, Stimatz, Towe, Van Valkenburg.
Total 8

Noes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Conover, Crippen, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Lane, Lybeck, McCallum, Pinsoneault, Regan, Shaw, Smith, Stephens, Story, Tveit, Weeding, Williams, Yellowtail.
Total 35

Excused: Kolstad, Neuman.
Total 2

Absent or not voting: Daniels, Lynch, Severson, Thayer, Mr. President.
Total 5

That SB 435 do pass. Motion carried as follows:

Ayes: Aklestad, Anderson, Bengtson, Boylan, Brown, Conover, Crippen, Farrell, Gage, Galt, Goodover, Hager, Hammond, Harding, Himsl, Hirsch, Keating, Lane, Lybeck, Manning, McCallum, Mohar, Pinsoneault, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Tveit, Weeding, Williams.
Total 33

Noes: Blaylock, Christiaens, Eck, Fuller, Haffey, Halligan, Jacobson, Lynch, Mazurek, Towe, Van Valkenburg, Yellowtail.
Total 12

Excused: Kolstad, Neuman.
Total 2

Absent or not voting: Daniels, Regan, Mr. President.
Total 3

SB 438 - That SB 438 do pass. Motion carried as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Lane, Lybeck, Lynch, Manning, Mazurek, McCallum, Mohar, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Weeding, Williams, Yellowtail, Mr. President.
Total 48

Noes: None.
Total 0

Excused: Kolstad, Neuman.
Total 2

Absent or not voting: None.
Total 0

SB 440 - That SB 440 do pass. Motion carried as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt,

Total 0

SB 427 passed as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Weeding, Williams, Yellowtail, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 432 passed as follows:

Ayes: Blaylock, Brown, Christiaens, Conover, Daniels, Eck, Fuller, Haffey, Halligan, Jacobson, Lane, Lybeck, Lynch, Manning, Mazurek, Mohar, Neuman, Pinsoneault, Regan, Stimatz, Towe, Van Valkenburg, Weeding, Williams, Yellowtail, Mr. President.
Total 26

Noes: Aklestad, Anderson, Bengtson, Boylan, Crippen, Farrell, Gage, Galt, Goodover, Hager, Hammond, Harding, Himsl, Hirsch, Keating, Kolstad, McCallum, Severson, Shaw, Smith, Stephens, Story, Thayer, Tveit.
Total 24

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 433 passed as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Weeding, Williams, Yellowtail, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 435 passed as follows:

Ayes: Aklestad, Anderson, Bengtson, Boylan, Brown, Conover, Crippen, Daniels, Farrell, Gage, Galt, Goodover, Hager, Hammond, Harding, Himsl, Hirsch, Keating, Kolstad, Lane, Lybeck, McCallum, Neuman, Pinsoneault, Severson, Shaw, Smith, Stephens, Story, Tveit, Van Valkenburg, Weeding, Williams, Mr. President.
Total 34

Noes: Blaylock, Christiaens, Eck, Fuller, Haffey, Halligan, Jacobson, Lynch, Manning, Mazurek, Mohar, Regan, Stimatz, Thayer, Towe, Yellowtail.
Total 16

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 438 passed as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Weeding, Williams, Yellowtail, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 440 passed as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Weeding, Williams, Yellowtail, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 446 passed as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, Manning, Mazurek, McCallum, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Story, Thayer, Towe, Tveit, Van Valkenburg, Weeding, Williams, Yellowtail

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 392	3/7/85	3/22/85	3/22/85						3/22/85 AS AMENDED
SB 411	3/7/85	3/22/85	3/22/85					3/22/85	
SB 412	3/7/85	3/25/85	3/25/85					3/25/85	
SB 414	3/7/85	3/20/85 3/21/85	3/21/85				3/21/85		
SB 418	3/7/85	3/26/85	3/27/85						3/26/85
SB 421	3/7/85	3/26/85		(Table bill 3/26/85)					
SB 424	3/7/85	3/26/85	3/27/85						3/26/85
SB 433	3/7/85	3/25/85	3/25/85				3/25/85		
SB 435	3/7/85	3/26/85	3/27/85						3/26/85
SB 449	3/7/85	3/21/85 3/28/85	3/28/85					3/28/85	
SB 451	3/7/85	3/25/85	3/25/85					3/25/85	
SB 453	3/7/85	3/21/85 3/27/85	(Tabled 3/27/85)						
SB 105	3/18/85	(re-referred back to committee)				Re-considered 3/19/85 and passed out with ~~BE CONCURRED~~ IN recommendation 3/19/85			
SB 230	3/18/85	(re-referred back to committee)				Re-considered 3/19/85 and passed out with BE CONCURRED IN recommendation 3/19/85			
SB 446	3/23/85	3/27/85 3/28/85	3/28/85					3/28/85	
SB 319	3/25/85	3/28/85	3/28/85				3/28/85		

[illegible] a separate sheet for each Senate Bill, and Resolution

BILL NO. 435

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT PERMISSION OF THE LANDOWNER MUST BE OBTAINED PRIOR TO USING PRIVATE LAND FOR RECREATIONAL PURPOSES; AMENDING SECTIONS 87-1-504 AND 87-1-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Landowner's permission required for recreation on private land. Except when incidental to and necessary for the recreational use of surface waters as provided by law, no person may enter or remain on private real property for recreational purposes without having first obtained permission from the landowner, lessee, or his agent. Any person convicted of violating this section shall be punished as provided in 87-1-102(1).

Section 2. Section 87-1-504, MCA, is amended to read:

"87-1-504. Protection of private property -- wardens as ex officio fire wardens. It shall be the duty of wardens (state conservation officers) to enforce the provisions of [section 1] on private lands and to enforce the provisions of 45-6-101, 45-6-203, and 75-10-212(2) on private lands where public recreation is permitted and to act as ex officio fire wardens as provided by 77-5-104."

Section 3. Section 87-1-505, MCA, is amended to read:

"87-1-505. Warden's power in protection of private property. Wardens (state conservation officers) shall have the power of peace officers in the enforcement of 45-6-101, 45-6-203, [section 1], and 75-10-212(2)."

NEW SECTION. Section 4. Codification instruction. Section 1 is intended to be codified as an integral part of Title 70, chapter 16, part 3, and the provisions of Title 70, chapter 16, part 3, apply to section 1.

-End-

THIRD READING
SB 435

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 26, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, March 26, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Krueger and Rep. O'Hara who were previously excused.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 45: Mary Ellen Connelly, District #8, testified as its chief sponsor. House Joint Resolution 45 is a joint resolution requesting an interim study of the laws relating to the collection and disposition of fines, forfeitures, costs, and fees in civil penalty and criminal proceedings. She said this resolution came about as a result of a DUI bill she had introduced earlier in this session. She discovered the laws relating to the collection and disposition of fines, forfeitures, costs, and fees in civil penalty and criminal proceedings are a mess. If the Legislature finds that there is not enough money available to study the laws, they can direct the Legislative Council to carry out the technical components of the study.

There being no further proponents or opponents, Rep. Connelly, closed. There being no questions, hearing closed on HJR 45.

CONSIDERATION OF SENATE BILL NO. 435: Senator Jack Galt, District #16, sponsor of this legislation, testified. This is an act providing that permission of the landowner must be obtained prior to using private land for recreational purposes. Senator Galt feels that it is only fair that the landowner knows who is on his property recreating.

PROPONENTS:

Conrad B. Fredricks, representing the Sweetgrass County Preservation Association, testified in support of SB 435. He said that this bill is designed to alleviate a problem which exists with regard to persons who use the lands of another for recreational purposes without permission. A copy of his written testimony was marked Exhibit A and attached hereto.

Lorents Grosfield, a rancher from Big Timber, appeared and offered testimony in support of SB 435. A copy of his testimony was marked Exhibit B and attached hereto.

Mike Micone, representing the Western Environmental Trade Association, wished to go on record as supporting SB 435.

Bill Morse, representing Stillwater County Association of Taxpayers, testified in support of this bill. He said that the association is particularly concerned that a great many people have attached tremendous weight to the Montana Supreme Court decision that precipitated HB 265. They wish to reinterate that it is the posture of the Legislature to make the law; and once that law is passed, then it is incumbent upon the supreme court to follow the law rather than to make law.

Charles Howe, a rancher from Gallatin County, urged the committee to pass this bill. He said this bill is a land-use tool that affords agriculture the same kind of protection that other business have in a urban setting. The landowner needs protection so that he can conduct his business in order to be profitable.

Mrs. Arch Allen, a rancher from Livingston, stated that she and her husband are very concerned with the bills considered before this committee today. A copy of her written testimony pertaining to SB 435, 418, 421 and 424 was marked Exhibit C and attached hereto.

George Rossetter of Fishtail testified on behalf of this bill. A copy of his testimony was marked Exhibit D and attached.

Also testifying very briefly in support of this bill were Verna Lou Landis, representing Park County Legislative Association (She said she supported the concept of SB 435.); Fred Lucas from Highwood; Bud Pile; and Gene Chapel, representing the Montana Farm Bureau. (A copy of his written testimony was marked Exhibit E and attached hereto.) who supports the concept. He urged the committee to table SB 435 pending the final outcome of HB 911. A copy of the Montana Cattlemen's Association position supporting SB 435 was submitted and marked Exhibit E-1.

OPPONENTS:

Rom Waterman, representing the Montana Stockgrowers Association, Montana Wool Growers Association, the Montana Association of State Grazing Districts, Montana Cowbelles, Montana Farmers Union, Montana Water Development Association, Women Involved in Farm Economics, and Montana Grange and Montana Irrigators, told the committee that it is with reluctance that he arises in opposition to this bill. Mr. Waterman does not believe that SB 435 extends the protection that many believe it does. He feels that it has language in it that will create the identical confusion to the language confusion of conspicuous posting. He feels that SB 435 may offer little, if any, protection. While he agrees that clarity is needed in this area, ambiguous and vague language

needs to be avoided. The vagueness in SB 435 will create problems of enforcement and leave landowners with the difficulty of adjusting and managing their land with reference to recreational use. He said those groups who he represents continues to support HB 911 and urge that SB 435 not pass.

Dan Heinz, representing the Montana Wildlife Association, said that as a freshman lobbyist, he didn't appreciate the efficiency and fairness that the committee dealt with the stream access and the trespass bill earlier in the session. However, he said he is beginning to understand how wisely that particular legislation was handled by the committee. He urged that the committee use the same wisdom in dealing a quick death to this bill. He said he would only testify on this bill but he would like to go on record as opposing the rest of the bills scheduled for hearing this morning.

Jim Flynn, director of the Department of Fish, Wildlife & Parks, testified as an opponent to SB 435. A copy of his written testimony was submitted and marked Exhibit F which is attached hereto.

Dianne McDermand, representing the Medicine River Canoe Club of Great Falls, stated her opposition to SB 435, 418, 421 and 424. A copy of her written testimony was marked Exhibit G and attached hereto.

Jo Brunner, representing the Montana Cattlefeeders and the Montana Grange, wished to go on record as being opposed to this bill. We feel that there needs to be an explanation. We testified before on this bill because we were assured by the sponsor of this bill and the other bills scheduled for today that these bills would not be used to kill HB 265. They were to be used as an insurance policy. She further said that she supports HB 911.

Walt Carpenter, representing himself and a number of friends and neighbors, said that SB 435 would preclude floaters from setting foot on land, even below the high water mark, without permission from the adjacent landowner, from the time they launch their craft until they reach their destination. A copy of his written testimony pertaining to this bill and the other bills to be later considered was marked Exhibit H and attached hereto.

Lavina Lubinus, representing WIFE, testified in opposition to the bill. A copy of her written testimony was marked Exhibit I and attached.

Tony Schooner from Butte, representing Skyline Sportsman, Coalition for Stream Access, and the Anaconda Sportsman's Fund, testified in opposition to the bill. They are opposed to this bill and the other bills before the committee this morning because these bills gut the stream access bill (HB 265) and make it worthless. He further said that HB 911

will take care of this issue satisfactorily.

Kevin Krumvieda, representing the Missouri River Flyfishers, submitted written testimony which was marked Exhibit J and hereto attached.

There being no further opponents, Senator Galt closed. He said that he certainly doesn't think that Mr. Waterman represents the views of most of the members of the organizations he spoke on behalf of although he may represent those organization's officers. Also, Senator Galt said this issue deals with a property right that doesn't have anything to do with HB 265; there is no connection between this bill and the other bills to be considered today. He feels landowners should have control over their property.

The floor was opened to questions from the committee.

Rep. Grady asked Mrs. Allen if her informant said anything about the decrease of the prices of land since the supreme court decision. Mrs. Allen said yes, he did, but he felt that with the guidelines that the legislature can establish or expand on with regards to the supreme court decision, it can be re-examined.

Rep. Eudaily said he is concerned with the penalty provision on line 17, page 1 of the bill. This language is going to add an extra penalty that the trespasser does not deserve. Mr. Conrad's only comment was that the committee could fix that language up any way it wishes.

There being no further questions, hearing closed on SB 435.

Because the next three bills, SB 421, 418 and 424 are related in content, Chairman Hannah said all of the chief sponsors of the bills could open. The committee would then hear testimony from proponents and opponents of the bills.

CONSIDERATION OF SENATE BILL NO. 421: Senator Pete Story, District #41, sponsor of SB 421, testified. This bill restricts landowner's liability towards recreational users. Senator Story said he would like to address the whole package of bills. He said the sponsors' intent with all these bills are not to pull anything over on anyone. When there is a compromise bill on a controversial subject, it may stumble and fall somewhere in the process. We feel that it is extremely important that this session addresses the relating stream access problems. If we don't, we fear very much that there will be hardening of the sides and that there will be polarization and bitterness, which would certainly not be in the best interests of this state. He feels it is the responsibility of this committee to represent those 250,000 who pay for fishing and hunting licenses and who are not represented by any one organization. These people do not want polarization. In closing, Senator Story said that these bills are needed especially if SB 265 doesn't get

through the Senate.

CONSIDERATION OF SENATE BILL NO. 424: Senator Bob Williams, District #15, chief sponsor of SB 424, testified on its behalf. This is an act defining "prescriptive easement"; providing that a prescriptive easement may not be acquired through recreational use of land or water; amending section 70-19-405, MCA. A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years. Senator Williams said that SB 424 was the result of the supreme court decision regarding the stream access issue. He feels that this area needs to be addressed. He believes the language of this bill is simple and clear and that it is very important to the landowner.

CONSIDERATION OF SENATE BILL NO. 418: Senator Paul Boylan, District #39, chief sponsor of this bill, testified. SB 418 is an act defining "ordinary high-water mark." Senator Boylan feels that this particular bill is the most important bill in the package dealing with this issue. The bill defines "ordinary high-water mark" as the line that water has impressed on soil by covering it for sufficient periods of time to deprive the soil of its vegetation and to destroy its value for agricultural purposes. Senator Boylan suggested that the committee amend the bill on lines 16 and 17 by striking "except when they carry sufficient water to support fishing or floating".

PROPONENTS TO THE BILLS:

Conrad Fredricks, attorney/rancher from Big Timber, spoke as a proponent to this package of bills. A copy of his testimony as to SB 418 and SB 424 was submitted and marked Exhibit K and Exhibit K-1 respectively. Mr. Fredricks also urged the committee to adopt the amendment proposed by Senator Boylan to SB 418.

Gene Chapel, president of the Montana Farm Bureau, said the Bureau supports the concept of these three bills, but would like to see all three tabled pending the final outcome of HB 265. A copy of his written statements were marked Exhibit L, L-1, L-2 and attached.

Bill Morse, representing the Stillwater County Association of Taxpayers, testified in support of all three bills. Mr. Morse addressed the liability factor attached to Senator Story's bill. He said the insurance industry is in a state of violent upheaval. With the staggering liability judgements by courts and juries around the country, no one knows where it all will end. He feels that it is incumbent that a way be made to restrict liability.

Norm Starr, rancher from Belgrade, said he supports HB 435 in addition to the rest of the bills in this package deal-

ing with the stream access issue. These bills cover liability, prescriptive easement and the high water mark which are the three primary issues in stream access. The environmentalists claim that they have everything they want in the supreme court decision. Mr. Starr asked the question of why are they, now, so adamant about HB 265? He finds it hard to believe as a present property owner that someone in an adversary role over the years in many instances would now suddenly become so concerned about his private property. He submitted that the grassroots of this state are not as enamored with HB 265 as they were 30 days ago. HB 265 has slipped a long, long ways from the original interim legislation committee's HB 16. He feels it is very important to keep these bills alive. He said that the landowners need a good, strong trespass bill.

Charles Howe, a rancher from Gallatin County, said that each of these bills is a good tool. He asked the committee to consider each of the four bills in an orderly way for private property rights.

George Rossetter of Fishtail spoke in favor of these bills. A copy of his written testimony has previously been marked Exhibit D. He feels that as a landowner, he needs every bit of protection he can get due to the deterioration he has witnessed on his own property.

Fred Lucas, another rancher, wished to go on record as supporting this package of bills.

Mike Micone, representing the Western Environmental Trade Association, urged the committee to hold these bills until the final outcome of HB 265 is known. He said that if HB 265 fails, landowners and recreationalists will have nothing.

Lorents Grosfield, a rancher from Big Timber, spoke in favor of these bills. (See written statement -- Exhibit B.)

Wes Henthorne from Big Timber, said that landowners would like to see a strong trespass bill to help the public use private property in a responsible manner. He also supports the rest of the bills.

Bud Pile, a rancher, told the committee that the damage done as the result of the supreme court decision can never be repaired by legislation with regards to the landowner/recreationalist relationship. He said that HB 265 takes care of the problems he, as a landowner, has because it expands on the supreme court ruling. He further urged, however, that the committee pass these bills under consideration today.

OPPONENTS:

Ron Waterman, representing the Montana Stockgrowers Association, Montana Wool Growers Association, the Montana Associa-

"ordinary high-water mark." He said that the committee can always come back and rechange the whole definition and replace it with the old definition as was done in HB 265. He doesn't think the bill should die, but they should wait and see what happens to HB 265. The motion was seconded by Rep. Montayne and failed on a voice vote.

Rep. Brown said that he feels that the provisions in SB 418, 424 and 435 are clearly handled in HB 265. By killing these bills, the Senate will have to deal with HB 265 which would take care of any leverage they feel they have with these bills. Rep. Brown said he does think that Senator Story's bill, SB 421, should be tabled in case the committee wants to look at it again. The question was called on the BE NOT CONCURRED IN AS AMENDED, and it carried with Rep. Cobb dissenting.

ACTION ON SENATE BILL NO. 421: Rep. Keyser moved to TABLE SB 421. The motion was seconded by Rep. Hammond and carried on a voice vote.

ACTION ON SENATE BILL NO. 424: Rep. Hammond moved that SB 424 BE NOT CONCURRED IN. The motion was seconded by Rep. Rapp-Svrcek. Rep. Cobb made a substitute motion to table SB 424. The motion was seconded by Rep. Hannah. The question was called on the latter motion, and it failed on a voice vote. The BE NOT CONCURRED IN motion carried on a voice vote.

ACTION ON SENATE BILL NO. 435: Rep. Brown moved that SB 435 BE NOT CONCURRED IN. The motion was seconded by Rep. Montayne and discussed. Rep. Hannah said he feels this bill is different and that it is more in line with HB 911. He said he could support a tabling motion.

Rep. Brown said he was in favor of killing the bill for the same reasons he expressed earlier. He feels it would take substantial amendments to take care of this bill. However, it was Rep. Cobb's opinion that the committee needs to keep this bill until the final outcome of HB 911 is known. Rep. Mercer said that SB 435 is HB 17 all over again, and the committee has already dealt with this issue.

Rep. Cobb moved that HB 435 be TABLED. The motion was seconded by Rep. Keyser and failed on a voice vote. The question was called on the BE NOT CONCURRED IN motion, and it carried on a voice vote.

ACTION ON SENATE BILL NO. 321: Rep. O'Hara moved that SB 321 BE CONCURRED IN. The motion was seconded by Rep. Brown. A requested gray bill was submitted which was marked Exhibit O and attached hereto.

Rep. Mercer moved that the amendments as set forth in the gray bill be adopted. The motion was seconded by Rep. Darko

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/26/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger			✓
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara			✓
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

EXHIBIT A
3/26/85
SB 435

TESTIMONY RE SENATE BILL NO. 435

Submitted by Conrad B. Fredricks, Big Timber, Montana.

Senate Bill No. 435 is a bill designed to alleviate a problem which exists with regard to persons who use the lands of another for recreational purposes without permission.

At the present time, there is a statute on the books (Section 87-3-304, M.C.A.), enacted in 1965, which requires a person to obtain permission of the landowner, lessee, or their agents before hunting big game animals on private property.

This statute has helped to maintain better landowner-hunter relations by making it easier for the landowner to control big game hunting on his property, easier for the landowner to protect his livestock, crops and other property from uncontrolled hunting, and easier for the landowner to fix liability when his livestock or other property is damaged or destroyed.

However, Section 87-3-304 only applies to big game hunting, and does not apply to other uses of property which are also dangerous and troublesome to the landowner and his property, such as bird hunting, predator hunting, bow hunting, non-game animal hunting, target practice, camping, firebuilding and use of off-road vehicles, including snowmobiles.

The Department of Fish and Game has recognized the problem and, apparently, supports the concept of Senate Bill No. 435, as is evidenced by the Department's "ASK FIRST" campaign. This bill merely, as a practical matter, gives statutory sanction to the "ASK FIRST" campaign and only requires what common courtesy and a concern for private property dictates as a matter of course.

Certainly, no one who has any respect for private property or the rights of landowners to protect and control the use of their property, which they bought and paid for and pay taxes on, could object to a requirement that a person obtain permission before using private property for recreational purposes. This would seem to be particularly true in Montana, where large amounts of public land are available for public recreation.

The State and Federal Governments have the power to, and do, promulgate and enforce regulations governing the use of public

lands.. Certainly it is only fair for the State of Montana, through its Legislature, to afford the same protections to private property.

It is submitted that only a person who has no respect for private property or a landowner's right to protect his property from damage or destruction would oppose this legislation. Unfortunately, there are persons in this category and it is those persons that this legislation is designed to apply to.

It may be argued that permission should not be required to use land for recreational purposes unless the landowner posts his land, showing that permission is required to use it for recreational purposes. First, the burden should be on the person who wants to use another's property for recreational purposes to make arrangements to use it, and the burden should not be on the landowner to post property to control recreational use, with the resultant expense and trouble. Secondly, there can be little doubt that posting does not work for the type of people who would want to use a landowner's private property for recreational purposes without permission, as is witnessed by the frequent tearing down and disappearance of signs erected by landowners to post their property. The responsibility should be on the shoulders of the persons who want to use private property for recreational purposes, not on the landowner. Big game hunters have shouldered this responsibility for years -- why shouldn't other hunters and recreational users?

It is submitted that this bill does not conflict with HB 911, which this committee drafted and which has passed the House and is currently in the Senate. This bill no more conflicts with HB 911 than the present statute requiring permission of the landowner for big game hunting on private property conflicts with the present general trespass laws. This bill only deals with permission for recreational use and does not require permission for all uses of land. Thus it is complementary to the general trespass laws, which cover all uses of land, and not in conflict with these laws.

Some persons have objected to the penalty provision in HB 911, because it could involve suspension of a license to hunt and fish. The penalty provision of HB 911 is the same as the penalty applied to hunting big game animals without landowner permission. If it is felt that this penalty is inappropriate, then the bill could be amended on line 17, page 1 thereof, by striking "87-1-102(1)" and inserting in lieu thereof "46-18-212", thereby imposing the general misdemeanor punishment.

It is respectfully submitted that this Committee should pass this bill with a recommendation that it be concurred in.

(House Judiciary Committee, March 26, 1985)

EXHIBIT B
3/26/85
SB 435 et.al.

TESTIMONY before the House Judiciary Committee, March 26, 1985. Helena, Montana, by Lorents Grosfield, cattle rancher from Big Timber, Montana.

Mr. Chairman, Members of the Committee:

I appear here today in support of SB 418, SB 421, SB 424, and SB 435. I must continue my opposition to HB 265 primarily because I believe that it is not a recreational access bill, but a land reform bill. An attempt has been made in HB 265 to greatly expand two specific Montana Supreme Court decisions involving two specific fact scenarios on two specific stream segments. The four Senate bills, together with HB 520, adequately address five of the six issues identified by virtually all Montana agricultural groups as needing attention. The sixth issue, that of portage, is not addressed, which leaves us with the language in the Supreme Court decisions as being current law.

On the afternoon of December 7, 1984, in a presentation on the stream access issue to the Water Forum held here in Helena primarily for the benefit of incoming legislators, Chief Justice Frank Haswell made the following statement: "Don't overanalyze the cases out of the context of the specific facts."

In HB 265, we see reference to all-terrain vehicles, big game hunting, other hunting, duck blinds and other permanent structures, overnight camping, and non-water related pleasure activities. While these activities may be addressed differently on Class 1 and Class 2 waters, I submit to you that none of them were in the "context of the specific facts" of either of the cases.

In HB 265, we see reference to required means of portage, easements that are to be donated and constructed at the expense of landowners, as required by Conservation Districts. This is completely out of the "context of the specific facts" of the cases. The Court said the public could portage around barriers "in the least intrusive manner possible, avoiding damage to the adjacent owner's property and his rights". That is substantially different from saying that landowners must provide and pay for portage means. One wonders how requiring a landowner to provide portage means at his own expense can be compatible with a "least intrusive manner", especially one that "avoids damage to the adjacent owner's property"--- is not a man's pocketbook, property?

Judge Haswell said, "Don't overanalyze the cases out of the context of the specific facts." Why should the Legislature go substantially beyond the Court in deteriorating the rights of property owners along streams, as it is being asked to do in HB 265? I hope this committee will not be intimidated into killing these four Senate bills, but will pass them out in the event of the demise of HB 265. And even if HB 265 should survive, SB 424 and SB 435 deserve your support.

SB 424 is not, as some have claimed, a stream access bill. Insofar as it references prescriptive easements on land, it is a needed separate protection for all landowners. It is probably true that it may not be appropriate to address prescriptive easements on land in a stream access bill, such as HB 265, and that is precisely why this separate legislation is before you. There is simply not any good reason why a prescriptive easement should be available for recreational use of private land.

SB 435 is an excellent companion bill to HB 911, which is the posting law drafted by this committee. While I believe that a user of private lands should know where he is and be authorized to be where he is, I realize that there is a lot of resistance by some recreationists to the concept of getting permission before entering private property. However, if both these bills were to pass this Legislature, landowners would be well protected against all forms of trespass, including recreational trespass. Because of the tremendous losses that have occurred in these landowner protections through things such as the stream access court decisions, it is essential that this Legislature give careful consideration to the improvement of landowner feelings towards recreational users through passage of much-improved trespass legislation. The "big game hunting by permission only" bill of a few sessions ago did a lot to improve relations and mutual respect between landowners and recreational users. SB 435, together with HB 911, will do much more.

I urge your favorable consideration of all four bills. I especially urge your favorable consideration of SB 424 and SB 435 (in the event that HB 265 passes the Senate and the other two bills automatically die). These two are worthy on their own merits.

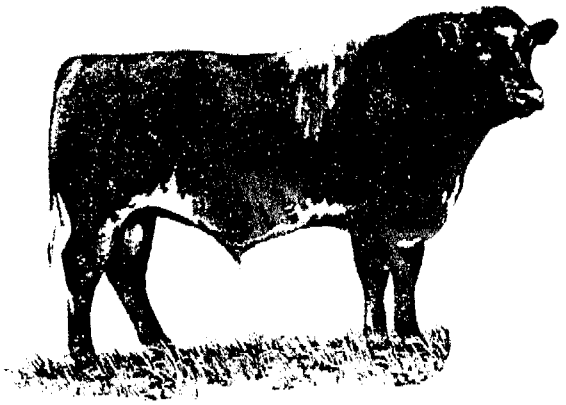

EXHIBIT C
3/26/85
SB 435; 418; 421; 424

FA RANCH

BOX 868 • LIVINGSTON, MONTANA 59047

Mr. Chairman - members of the committee -
I am Mrs. Arch Allen of Livingston. As a rancher with a stream running thru the middle of our ranch, my husband and I support Senate Bills 418, defining "ordinary high water mark"; Senate Bill 421 which addresses land owner liabilty when the public uses surface water flowing over his property; Senate Bill 424 denying perscriptive easement, and Senate Bill 435 requireing permission to use privately held land for recreational purposes.

We urge you to keep these four bills alive as backups to HB 265.

SB 435 would go a long way to improve landowner-sportsman relations by putting communication on a one -on-one basis where friendly understanding and mutual consideration can result.

SB 435 also acknowledges private ownership and management of deeded lands. Without this, agricultural lenders justifiably will discount these so-called "prime lands" as no longer being controlled or managed by the property owner and, therefore, greatly reduced in value as collateral on their agricultural loans.

Thank you for your consideration.

Mrs. Arch Allen

EXHIBIT D
3/26/85
SB 435

TO: HOUSE JUICIARY COMMITTEE
MY NAME IS GEORGE ROSSETTER OF FISHTAIL MT. I AM A RANCH OWNER AND CATTLE GROWER.

STREAM ACCESS IS A COMPLEX SUBJECT. IF THE RECOMENDATIONS OF THE JOINT INTERIM SUBCOMMITTEE NO.2 GIVEN IN A REPORT TO THE 49TH. LEGISLATURE HAD BEEN FOLLOWED, THE VIGOROUS OPPOSITION TO H.B.265 WOULD NOT BE APPARENT TO-DAY. THE REPORT PREPARED BY THE SUBCOMMITTEE NO.2 REFLECTS A WELL THOUGHT-OUT BILL UNLIKE THE NON-CONSTITUTIONAL ANTI-LAND OWNER EPISTLE THAT 265 HAS TURNED OUT TO BE. IN MY OPINION THIS BILL WITH ITS MANY FAULTS AND DEFICIENCIES WILL EITHER BE AMENDED DRASTICALLY BY THE SENATE OR FELT TO BE SO FLAWED THAT INSUFFICIENT TIME WILL BE AVAILABLE TO PROPERLY CORRECT IT. THUS THERE IS THE REAL POSSIBILITY THAT IT WILL DIE IN THE SENATE. IF THIS PROVES TO BE THE CASE, THE SENATE BILLS 418 AND 421 WILL BE NEEDED AS GUIDELINES BY BOTH THE RECREASIONISTS AND THE LAND OWNERS. BILLS 424 AND 435 WILL BE NEEDED BY THE LAND OWNERS TO ASSURE PROPER PROTECTION BOTH FOR THEMSELVES AND THEIR LAND.
THANK YOU.

EXHIBIT # E
3/26/85

MONTANA
FARM BUREAU
FEDERATION

502 South 19th
Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Gene Chapel

BILL #: SB 435 DATE: 3/26/85

SUPPORT XXX OPPOSE

Mr. Chairman, members of the committee, for the record my name is Gene Chapel, President of the Montana Farm Bureau.

Farm Bureau members support the concept of SB 435, however we feel that private property rights and land owner permission are better covered in HB 911; therefore we feel SB 435 complicates the problem and would like to see it tabled pending the final outcome of HB 911.

SIGNED: Gene Chapel

EXHIBIT #E-1
3/26/85

MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steak" IN MONTANA'S FUTURE

P.O. Box 1234
Helena, Montana 59624

TESTIMONY PRESENTED TO HOUSE JUDICIARY

COMMITTEE CONCERNING SENATE BILL 435

Mr. Chairman, members of the committee, S.B. 435 represents a sensible, straightforward solution to the presently confused situation which both landowner and sportsman find themselves in concerning permission for recreational use of private land. While the Dept. of Fish, Wildlife, and Parks does enforce a rule prohibiting big game hunting without permission, other activities require no permission unless land is heavily posted. Misunderstandings are bound to occur under the present trespass law, especially in view of recent Supreme Court decisions allowing public access to all surface water. By simply stating that permission is required in order to recreate upon another's land, S.B. 435 clears the air and lays the issue to rest.

The Montana Cattlemen's Association is aware of H.B. 911, which is another effort to resolve the problem of defining criminal trespass. We do not oppose H.B. 911. It does improve the existing law in that it states exactly where and how land must be posted. The requirements specified are not unreasonable. Yet, any posting requirements invite trouble. The recreationist is led to believe that he will be welcome or at least tolerated wherever a landowner has neglected to place proper notice around a parcel of land. Frequently, this assumption turns out to be incorrect and an unpleasant confrontation results. While, under such a law, the sportsman need not fear prosecution, the experience of telling and being told to "get off" spoils yet another landowner-sportsman relationship. We must, therefore, support S.B. 435 as the best way to approach the question of when permission is required for recreational use of private land. We find that responsible sportsmen and recreationists have no desire to use another's property without permission, regardless of the presence or absence of signs or flourescent painted posts.

The Montana Cattlemen's Association asks for a "do pass" on this welcome addition to the trespass law. Thank you.

MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steak" IN MONTANA'S FUTURE

P.O. Box 1234
Helena, Montana 59624

TESTIMONY CONCERNING HOUSE BILL 911

Mr. Chairman, members of the committee, H.B. 911 contains some real improvements to the trespass law, from both the landowner's and sportsmen's viewpoints. By defining exactly what constitutes effective notice, this bill clarifies the trespass issue to a great extent. Giving the landowner flourescent orange paint as an alternative to printed "no trespassing" signs solves one of the mechanical problems involved in posting notice.

The Montana Cattlemen's Association has promoted S.B. 435 as a better alternative to H.B. 911. If we must choose between the two, we would rather have S.B. 435. We have attached a copy of our testimony on H.B. 435, in which we explain our preference for it. But, we would not want to see H.B. 911 killed under any circumstances. It represents a necessary improvement to the law. S.B. 435 deals only with recreational use of land; but, there are other uses, to which HB 911 would still apply. We find these two bills to be compatible and see no reason not to pass both of them.

Thank you.

EXHIBIT F
3/26/85
SB 435

SB 435

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

March 26, 1985

The department supports the expansion of authority for state game wardens to clearly enforce all recreational trespass. Under present law, such clarity only exists for big game hunting.

Additionally, we can support the premise in Section 1 of this bill that permission should be gained to use private property for recreational purposes.

However, we are concerned that this legislation eliminates the need for proper notice by posting before trespassing can occur. This legislation not only doesn't require such notice for other recreational uses, but would appear to remove the present statutory requirement for big game hunting.

As I have mentioned, there is no question that an individual who is recreating should have permission from the landowner if private land is to be used for recreation. But we must keep in mind that Montana is a large and diversified state with many different types of intermingled landownership. Some of this land is clearly fenced and some is not. Some is publicly owned and some is not. As a result, there are a variety of circumstances afield which can and do lead to unknowing trespass.

While it is not realistic to require an undue amount of posting, neither is it realistic to allow for no posting.

We have supported legislation this session to address trespass and posting. That legislation is more appropriate than SB 435. As a result, we would urge that this measure do not pass.

EXHIBIT G
3/26/85
SB 435; 418; 421; 424

Medicine River Canoe Club

Great Falls, Montana

MARCH 26, 1985

House Judiciary Committee
State Capitol
Helena, Montana

Chairman Hannah & Members of the Committee:

My name is Dianne McDermand. I am speaking today for the Medicine River Canoe Club of Great Falls. Our organization has been very closely involved with the stream access issue for over four years now. We have faithfully attended almost all hearings and meetings on this issue.

We wish to express our opposition to the package of Senate bills (SB 418, 421, 424 & 435).

In SB 418 the definition of ordinary high water mark is inaccurate and unrealistic. The soil is not necessarily deprived of vegetation although the type and amount of plant life is altered so that this line of demarcation can be recognized. This definition fails to recognize plants that require some water coverage for at least a period during their growth season. These plants often live just below the ordinary high water mark. Although high water will destroy many plant species as the water level drops from its spring highs, this soil is often revegetated by moisture loving or semiaquatic plants.

Perhaps a man can set on paper any definition of high water mark he wishes, but regardless of what he writes, Mother Nature will still persist in defining it in her own destinctive way. On the other hand, HB 265 does present a realistic depiction of the ordinary high water mark.

SB 424 would prohibit prescriptive easement for all recreational uses. We believe that in a stream access issue, denial of prescriptive easement should be confined to water related activities as is done in HB 265.

We oppose SB 435. The real intent of Section 1. is difficult to pin down. What are the activities that are "incidental to and necessary for the recreational use of surface waters"? HB 265 is much more specific and would therefore seem to be of greater benefit to both the landowner and recreationist by letting each know what is or is not allowed. Regarding the trespass aspect of SB 435, we feel that HB 911 much more appropriately addresses this.

HB 265 is a comprehensive bill that addresses all aspects of the stream access issue fairly. On the contrary, this package of Senate bills appears to be a piecemeal and somewhat haphazard approach to the issue. If these bills were to become law I could foresee much time being spent in the next legislature trying to fill in the gaps.

Another consideration to be carefully weighed is the broad support by recreationists and agriculturalists for House Bills 265 & 911 compared to the support of these Senate bills proffered by a vocal minority. There must be a reason for the broad support for the House Bills. I believe that this comes from a multitude of people using sound reasoning, good judgement and a spirit of cooperation and conciliation.

Please reject this package of Senate bills that offer only the necessity of future legislation and the potential for further, wasteful litigation.

Thank you.

Sincerely,

Dianne L. McDermand

Dianne McDermand, Spokesman
Medicine River Canoe Club
3805 4th Avenue South
Great Falls, MT 59405

EXHIBIT H
3/26/85
SB 435; 418; 421, 424

March 26, 1985

Mr. Chairman and Members of the
House Judiciary Committee:

I live in Great Falls, and I speak this morning for myself, and a number of friends and neighbors who were unable to attend this early morning session. We are opposed to Senate Bills 418, 421, 424, and 435, as the issues to which these bills relate are better addressed by House Bill 265, which is now being considered in the Senate Judiciary Committee.

HB 265 has a considerably better definition of the high water mark than SB 418. While I have no particular fault to find with the intent of Senate Bills 421 and 424, the matters of prescriptive easement by recreational use, and landowner protection from liability due to recreational activities are adequately covered in HB 265.

Senate Bill 435 would preclude floaters from setting foot on land, even below the high water mark, without permission from the adjacent landowner, from the time they launch their craft until they reach their destination. This is contrary to the two recent Supreme Court decisions, and is completely unacceptable To Montana sportsmen.

I urge you to reject this entire package of four Senate bills, as they seriously discriminate against the recreating public.

Respectfully,

Walt Carpenter

Walt Carpenter
320 40th Street South
Great Falls, MT 59405

Attachments

18 MAR '85

The Billings Gazette Opinion

Stream-access bill in danger

A Senate Judiciary sub-committee has attemped to design a horse and turned up with a camel.

And that misshapen camel — amendments to a stream access bill being considered by the Senate — should be put out of its misery as quickly as possible.

Gazette opinion

The access bill, House Bill 265, was born of compromise and reason.

The Montana Supreme Court ruled in a recent landowner case that recreationists have legal access to the state's streams for recreational purposes. They also have a right, according the the ruling, to portage past barriers in the stream in the least obtrusive manner possible.

The ruling was a landmark. It held, basically, that most of the state's streams are the property of the public and denying the public access to its property was wrong.

That, of course, put the hairs up on the napes of landowners' necks. Landowners pay taxes on some of the land addressed by the ruling. How could the state demand taxes and exercise control over the land at the same time? And what about the "sportsmen" who litter the land and endanger cattle and ranchers alike.

At this point, the advantage obviously lay with recreationists. The court had given them widespread powers, but the ruling was open to question on some points, too.

So the recreationists and the landowners took the matter to the Legislature in an attempt to reach a more stable middle ground.

The result was House Bill 265. That bill isn't perfect of course. For example, it offers a rather nebulous definition of what represents class I and class II streams — class II being limited in recreational uses.

But it was a compromise gnashed out in the House and transmitted to the Senate. Then, the Senate Judiciary Committee appointed a sub-committee to study the bill, and all sense of reason fled.

The subcommittee offered proposals which would preclude portaging around "natural" barriers, big game hunting, camping, or building temporary duck blinds on *all* streams.

Additionally it defined the "high-water" mark as the point at which the water touches the shore: summer, fall, winter or spring.

Those amendments, of course, are patently ridiculous.

Under the provisions of the amendment recreationists would be banned from eating lunch on shore, seeking refuge on land from a storm, stopping to fish. Camping would still be permitted provided the campers were willing to camp in the water.

Basically, the floaters would be precluded from setting foot on land from the time they pushed their boats into the water to the time they reached their destination.

Recreationists have bridled at the amendments the court ruling offered them free rein. Sportsmen don't have to make *any* concessions.

Landowners fear the amendments will jeopardize any reasonable solution to the problem.

The subcommittee has threatened the spirit of compromise that prevailed until last week. Members ought to rethink their positions before releasing their "camel" on the public. The public simply isn't in any mood to buy camels.

Lewistown News Argus
3/17/85

Guest opinion . . .

Stream bed access bill is a good bill, fair to landowners

by Gene Chapel
President, Montana Farm Bureau

House Bill 265, the stream bed access bill, has taken a bum rap for many things that it doesn't do and hasn't got credit for the good it will create for Montana landowners.

The Montana Farm Bureau, and 13 other state ag organizations, spent the last year researching with landowners and lawyers to create a bill to protect landowners within the confines of two Supreme Court decisions. The court took all control and rights (except paying taxes on the stream bed) away from landowners 18 months ago.

HB 265 has the support of major state recreational groups but there are a few landowners and hunting groups that would harpoon this bill and live with the court decisions.

I can guarantee the good people of Montana that the Farm Bureau and groups such as the Stockgrowers and Woolgrowers have never given away landowner rights and never will. The Supreme Court took away these rights and we seek to regain as much control of the waterways as we can so we can manage our operations with the least possible interference from the recreating public.

Below is a comparison of where we are now and where we will be with HB 265. Read this, then please call your senator or as many senators as possible and help get HB 265 passed.

Thank you.

Supreme Court Rulings	Result	HB 265 provisions	Result
Landowner has no right to control use of surface waters, except to satisfy prior appropriation uses	Full public use of water without regard to land ownership	Public recreational rights recognized but certain activities (vehicle operation big game hunting prohibited, camping and creating certain structures banned on smaller streams)	Public right defined and limited where recreational use would conflict with private rights
Recreational use of waters recognized, but water capacity alone determines types and availability	No definition of recreational use, reference to other state statutes will supply definitions	Recreational users defined and restricted to water-related activities with some restrictions	Recreational activities on water restricted to water activities
Public trust doctrine does not permit private party to interfere with public's right to recreational use of surface waters	Unlimited public use of all state water with no interference	Limits on public uses imposed to assure activities are water related, bans use of diverted or impounded waters, landowners may fence across streams and rivers	Landowner management options protected and preserved, recreational activities limited to stream use only
Public trust doctrine permits full recreational use of surface waters	Public easements on waterways, potential prescriptive easements on private property	Prescriptive easements cannot be developed through use of waters, beds, banks, portage routes or across private land to reach waters	No potential prescriptive easements developing on private land
Public trust doctrine permits full recreational use of surface waters	Unlimited public use of all state water with no interference	Fish and Game Commission must formulate rules limiting, restricting, or banning types and extents of recreational use of waters	Limits recreational use of water for health, safety and protection of public and private property
Public prohibited from crossing private property to reach waters	Public trespassing across private land not permitted	Public prohibited from crossing private property to reach waters	Public trespass across private land not permitted
Public's use of water is, under normal circumstances, allowed to high water mark of waters	No definition of high water mark and potential of including flood plains while wet or dry	High water mark defined to mean line impressed on land by water for sufficient periods to distinquish areas, banning recreational use of flood plains	Contains recreational activities to within banks of a stream
Public's right to use stream includes right to portage around all barriers which interfere with right, allows portage in least intrusive manner avoiding private property damage	No definition of barrier. Public alone determines manner and method of portage	Barriers defined as only objects which totally or effectively obstruct recreational use of water; portage permitted avoiding damage to private land and rights, route determined to preserve landowner management needs	Public given right to portage around barriers, landowner can restrict portage to exclusive route for management needs
Surface water user has right to make full recreational use of water without control by landowner	Recreational user present on land as a matter of right, landowner probably owes duty of ordinary care	Landowner and supervisor liability to recreational user limited to willful or wanton misconduct	Limited duty of care owned recreational user, prohibits intentional acts designed to ignore
Public has right to use water, the bed and bank up to ordinary high water mark and to portage around barriers.	Recreational use includes water, beds and banks of streams	Surface waters defined to include beds and banks of streams up to ordinary high water mark	Public recreational uses include water, beds and banks of streams

EXHIBIT I
3/20/85
SB 435

WITNESS STATEMENT

NAME Lavina Lubinus BILL NO. SB 435

ADDRESS 1501 Chestnut DATE 3/26/85

WHOM DO YOU REPRESENT? WIFE

SUPPORT ~~X~~ OPPOSE XX AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This is already being done by law. so the bill is redundant~~a~~

EXHIBIT J
3/20/85

MISSOURI RIVER FLYFISHERS

TROUT UNLIMITED

P.O. Box 6398
Great Falls, MT 59406

March 26th, 1985

Mr. Chairman and Members of the House Judiciary Committee:

Again I appear before you on behalf of the Missouri River Flyfishers to testify on the stream access issue. You have before you four bills, Senate Bills 418, 421, 424, and 435, that either duplicate or usurp House Bill 265. These bills have been touted as "back-up" bills in case H.B. 265 fails in the Senate, but they are actually being pushed through whether H.B. 265 passes or not. These bills are counter-productive and offer no real compromise on the stream access issue, as does H.B. 265, and in fact muddy the waters.

The Missouri River Flyfishers reiterates its support of H.B. 265 as the only true vehicle of compromise on the stream access issue. It alone encompasses all the issues brought up by these other bills, save the trespass issue, which H.B. 911 adequately addresses. We ask you to continue your support of H.B. 265 by killing these duplicative and non-productive bills.

Kevin Krumvieda
Secretary

TESTIMONY OF THE MONTANA COUNCIL, TROUT UNLIMITED

S.B. 435

HOUSE JUDICIARY COMMITTEE

March 26, 1985

Mr. Chairman and Members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

We question certain aspects of this bill. While we generally support the concept of obtaining landowner permission before using private land for recreation, we believe that this bill imposes too heavy a burden on recreational users to know the land ownership and boundaries at all times. A sportsman could use all the usual tools at his disposal, including maps, posting, inquiries and personal knowledge, and still be mistaken about ownership and boundaries. Many thousands of acres of land have changed from public to private ownership since maps have been revised, and not all lands are accurately posted. Therefore, this bill would criminalize good faith behavior on the part of a sportsman who made a thorough good faith effort to do the right thing. It would also essentially impose absolute liability for an activity not inherently dangerous or threatening.

In addition, we do not believe that the term "incidental to and necessary for" the recreational use of surface waters is sufficiently clear to give guidance to the same class of sportsmen who are trying to do the right thing. We would also point out that the penalty for violation would include not only a fine and a jail sentence, but also loss of the privilege to hunt, fish or trap for a period of at least two years following the date of conviction. We believe that the penalty is inappropriate for what would be essentially a trespass situation which could occur without knowledge, intent or even negligence on the part of the defendant.

Our position is not that there is no need for legislation in this area. The purpose of the bill could be accomplished in other ways, for example, by a legislative statement of what constitutes adequate posting on the part of a landowner. That approach could provide more certainty for the landowner while not requiring sportsmen to shoulder a potentially impossible burden.

As introduced, however, we must oppose S.B. 435 and request that the Committee not take favorable action on it.

Thank you.

EXHIBIT K
3/26/85

TESTIMONY REGARDING SB 418

Submitted by: Conrad B. Fredricks, Big Timber, Montana.

Senate Bill No. 418 is a bill which defines "ordinary high-water mark" for the purpose of defining the public's right to make recreational use of the waters of the state given by the Supreme Court of Montana in the Curran and Hildreth decisions.

The Supreme Court of Montana, in stating the principle that the public had the right to use the surface waters of the state for recreational purposes within the ordinary high-water mark, did not define what it meant by "ordinary high-water mark".

In order to avoid continuing litigation over the uncertainty created by this lack of definition by the Supreme Court, it was the feeling of most persons concerned with the public's recreational use of the waters of the state that it was imperative that the Legislature define "ordinary high-water mark".

The definition contained in the first sentence of Senate Bill No. 418 is the one used by Soil Conservation District Supervisors for years in administering "The Natural Streambed and Land Preservation Act of 1975" (Title 75, Chapter 7, Part 1, M.C.A.).

This definition is one that is easy to administer and which follows the plain-English meaning of "ordinary high-water mark". It is readily visible, is capable of clear delineation, and corresponds to what any reasonable person would consider to be the "ordinary" high-water mark, as opposed to an "extraordinary" high-water mark.

There is currently a very similar version of the definition contained in SB 418 presently under consideration by a subcommittee of the Senate Judiciary Committee, in their consideration of HB 265. The definition of the Senate subcommittee of ordinary high-water mark currently under consideration is as follows:

"'Ordinary high-water mark' means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of

substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water mark."

In order to make SB 418 consistent with HB 265, as currently in the Senate subcommittee, it certainly could be amended by amending line 12 to read "for sufficient periods of time to deprive the soil of substantially all of its terrestrial" and by inserting, on line 13, between the words "its" and "value", the word "vegetative".

Certainly, there is no quarrel with the version currently before the Senate subcommittee in HB 265, except that a dry flood channel should also be not considered to be within the ordinary high-water mark for recreational purposes. Dry flood channels are not covered by the current Senate subcommittee definition.

It is respectfully submitted that SB 418 should be passed, as amended, by the House, in the event that HB 265 should not be concurred in by Senate. It is important to have a definition of "ordinary high-water mark", in order to eliminate the uncertainty caused by the Supreme Court's failure to define this term.

(House Judiciary Committee, March 26, 1985)

March 26, 1985

Mr Chairman and members of the committee.

I am Verna Lou Landis representing Park Co. Legislative Ass'n.

We support the concept of Senate Bills 418 - 421 - 424 and 435. We feel they should be left viable, in the event that H. B. 265 does not carry sufficient support to be passed into law.

Thank You.

March 16, 1985

Senate Bills 418 - 421 - 424 - 435

We of the M.C.A.P.A. do support these bills and ask fair hearing and a do pass recommendation.

Thank you.

Meagher County Agricultural Preservation Ass"n.

George Zieg, Jr.
White Sulphur Springs, MT

March 24, 1985
Greenough, MT 59836

Representative Tom Hannah
Chairman, House Judiciary Committee
Capitol Station
Helena, MT 59620

Dear Representative Hannah:

This brief letter is in regards to S.B. 435, which is currently before your committee.

I believe that the issue of recreational trespass and concurrent enforcement by the Department of Fish, Wildlife and Parks must be addressed in any stream access legislation considered this session. In my opinion, S.B. 435 treats this issue in a simple and straight foreward manner. It requires the recreationist to obtain permission before using private land, which is reasonable; and it gives game wardens the authority to enforce recreational trespass on private land. This extension of game warden authority is logical because the Department is the primary state agency responsible for the management of public recreation in Montana.

In closing, I urge your favorable consideration of S.B. 435. and thank you for this opportunity to comment.

Sincerely,

Hank Goetz

Hank Goetz

(This sheet to be used by those testifying on a bill.)

NAME: Conrad B Fredricks DATE: 3/26/85

ADDRESS: Big Timber

PHONE: 932-5440

REPRESENTING WHOM? Sweet Grass County Preservation Assn.

APPEARING ON WHICH PROPOSAL: SB 435

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: See prepared statement.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME Sam P Maloney BILL NO. SB 435

ADDRESS Box 139 Helena MT 59710 DATE 3/26

WHOM DO YOU REPRESENT? _____

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: This Bill is a masterwork of simplicity. It grants the private landowner the same privileges currently reserved only for the state.

WITNESS STATEMENT

NAME Linda Larson BILL NO. SB 435

ADDRESS Box 134 Alder Mt. DATE 3/26/8

WHOM DO YOU REPRESENT? Land owners

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I hope you will pass SB 435, I think it protects the landowner from trespass without permission.

Thank You
Linda Larson

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CS-34

WITNESS STATEMENT

NAME Bill Larson BILL NO. SB 435

ADDRESS P.O. Box 136 Alder, Mt. DATE 3/21/85

WHOM DO YOU REPRESENT? Land owners

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I believe SB 435 protects the land owners from all forms of trespass without land owner's permission. I hope you will pass this bill.

Bill Larson

STANDING COMMITTEE REPORT

March 26 19 35

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 435

Third reading copy (Blue color)

PRIOR PERMISSION WHEN USING PRIVATE LAND FOR RECREATIONAL PURPOSES

Respectfully report as follows: That Senate Bill No. 435

BE NOT CONCURRED IN
DO PASS

66

STATE PUB. CO.
Helena, Mont.

REP. TOM HANNAH, Chairman.

COMMITTEE SECRETARY